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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN OSCAR FERNANDEZ

Defendant and Appellant.

G056561

(Super. Ct. No. 17HF0834)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,  
Johnathan S. Fish. Affirmed.

Robert V. Vallandigham, Jr., under appointment by the Court of Appeal,  
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

We appointed counsel to represent Jonathan Oscar Fernandez on appeal. Counsel filed a brief that set forth the facts of the case. Counsel did not argue against his client but advised the court he found no issues to argue on Fernandez's behalf.

Counsel filed a brief following the procedures outlined in *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). The court in *Wende* explained a *Wende* brief is one that sets forth a summary of proceedings and facts but raises no specific issues. Under these circumstances, the court must conduct an independent review of the entire record. When the appellant himself raises specific issues in a *Wende* proceeding, we must expressly address them in our opinion and explain why they fail. (*People v. Kelly* (2006) 40 Cal.4th 106, 110, 120, 124 (*Kelly*).) Fernandez did not raise any issues himself.

Counsel advised the court he "reviewed the entire record on appeal and, among other things, considered a number of possible issues, including supporting evidence, propriety of the jury instructions, possible prosecutorial error in closing argument, the propriety of the sentence imposed, including the terms and conditions, the sentence credits and the fines and fees." Counsel did not provide the court with any information as to issues that might arguably support an appeal pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*). We gave Fernandez 30 days to file written argument on his own behalf. Thirty days have passed, and Fernandez has not filed any written argument.

We have reviewed the record in accordance with our obligations under *Wende*. We found no arguable issues on appeal. We affirm the judgment.

## FACTS

An individual attacked the victim with a bat in a park sometime between 9:00 p.m. and 11:00 p.m. The victim saw the assailant approaching from the Veneto apartment complex. The assailant swung the bat at the victim and hit him on the left leg, arm, and back. The victim began trying to tug the bat away when he felt something on

his lip and a gash in his throat. The victim did not recall getting hit in the head with the bat. The victim described being cut with a knife or a sharp object. The victim could not give a better description of the weapon because it was too dark. This fighting took place, more or less, in the parking lot area of the park.

After the assailant hit him and cut him, the assailant said, “That is for taking a shit on my doorstep.” The victim claimed he did not know what the assailant was referring to. After making the remark, the assailant ran towards the Veneto apartment complex where the victim had first seen him. The victim believed the attacker took the bat with him. The victim chased the assailant and saw what door he entered. Before the victim started knocking on the door, he observed feces rubbed all over the door. The victim took a picture of the feces because he thought it was funny.

When the fighting subsided, the victim went to the car where his friend was waiting with a second person. The victim had called his friend as he was chasing the assailant. The friend took the victim to the hospital.

At the hospital, a physician’s assistant cleaned and sutured the victim’s neck wounds with subcutaneous stitches and skin stitches. He also stitched the wound on the victim’s lip area. The wounds were not life-threatening. The victim also had a contusion on the back of his head, likely from being hit by a blunt instrument. Other than performing a CT scan, the head injury was not treated and nothing else was needed.

Hours later, officer Jasper Kim responded to the hospital for an assault with a deadly weapon investigation. Kim was the first officer to respond and located the victim in a hospital bed. The victim seemed dazed and possibly under the influence of a controlled substance. He had a cut lip and a lacerated neck. His speech was slurred. After some time, Kim began to suspect the incident involving the victim was related to a dog feces incident he learned about.

The dog feces incident occurred earlier the same evening as the assault. Officers responded to a “suspicious male” call at 245 Veneto. When the officers arrived, they observed fresh feces smeared on the door. Officer Cord Blevins met two juvenile residents, one female and one male. As the officers were asking if there was an adult they could speak with, the female juvenile received a call on her cell phone. Blevins asked her to put the call on the speaker. During the conversation, Blevins heard her use the name Jonathan. The female juvenile later identified the caller as her brother. A portion of the call was recorded on Blevins’ field audio recording device. At one point during the call, Blevins heard Jonathan say, “All right, I know where he lives, I will go find him right now.” Hearing this, Blevins became concerned Jonathan knew who had defaced his door and it may lead to an altercation. The officers then began speaking with Jonathan, but Jonathan identified himself as “Nunya.” After concluding the caller was just “playing games” with them, the officers left.

At the hospital, the victim was somewhat evasive in responding to Kim’s questioning. He told Kim that he had been wounded by an acquaintance, but did not know his name. The victim said he knew where the man lived and could take Kim there. He also said that the man asked him, “Why did you have to start your shit.” Kim interpreted that as meaning why did the victim start the incident. The victim told Kim he had been at San Carlo Park with his friend when someone hit him in the back of the head with a baseball bat. The victim told Kim that he went to the attacker’s residence to find him and after no one answered the door, another fight took place. The victim said he had seen the assailant with a pocket knife as opposed to a fixed blade knife.

Blevins responded to the hospital shortly after Kim, and he also spoke with the victim. Blevins asked the victim if he had smeared dog feces on the front door at 245 Veneto. The victim nodded his head up and down affirmatively. The victim told Blevins his attacker was the older brother of C.C. and said he had been wearing a black

shirt during the incident. The victim initially said that the incident happened at San Carlo Park, but Blevins later determined it was San Marco Park (across the street). The victim told Blevins that he had been banging on the apartment door because C.C. had his iPad.

After Kim contacted him, Detective Stephen Meyer began trying to identify the assailant. He was able to locate a jail booking photograph of a possible suspect and created a six-pack photo lineup. Fernandez's photo was placed in position No. 4 for the lineup. At the hospital, Meyer showed the victim the photographic lineup, and he selected Fernandez's photograph as someone who looked familiar.

The same day, Detective John Sanders met Fernandez at the police station and interviewed him along with Meyer. After Sanders advised Fernandez of his rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436, he waived them. Fernandez initially indicated he did not know what Sanders was talking about. Fernandez denied he had been at 245 Veneto the night before but said he had been in Downey where he lived. Fernandez denied speaking on the phone with an officer the night before, indicating it had been his cousin who used his name. Fernandez denied telling his younger brother the victim had put the dog feces on the door and he was going to "take care of business." Fernandez denied he attacked the victim or that he had cut the victim's neck with a knife. Fernandez admitted he had a box cutter when officers contacted him that morning, but he explained he had just come from work where he uses it to cut boxes. The interview was recorded and the recording was later played at trial.

At trial, the prosecutor confronted the victim with the timestamp on his cell phone that indicated he took the photograph before the attack. But the victim maintained he took the photograph after the attack. The victim admitted being mildly intoxicated. The victim denied smearing dog feces on the door.

The jury convicted Fernandez of premeditated and deliberate attempted murder (Pen. Code,<sup>1</sup> §§ 664, subd. (a), 187, subd. (a), count 1); mayhem (§ 203, count 2); assault with a deadly weapon, a baseball bat (§ 245, subd. (a)(1), count 3); and assault with a deadly weapon, a sharp object (§ 245, subd. (a)(1), count 4). The jury found true an allegation Fernandez inflicted great bodily injury on the victim (§ 1203.075, subd. (a)). As to counts 1 and 2, the jury concluded Fernandez personally used a box cutter, a dangerous and deadly weapon (§§ 12022, subd. (b)(1), 1192.7). With respect to count 1, the jury found true Fernandez personally used a baseball bat, a dangerous and deadly weapon (§§ 12022, subd. (b)(1), 1192.7).

After the trial court granted Fernandez's motion to dismiss the premeditation and deliberation finding (§ 1385), the court imposed the midterm of seven years on count 1. As to count 2, the court imposed and stayed the midterm of three years (§ 654).<sup>2</sup> The court imposed and stayed the midterm of three years on counts 3 and 4 (§ 654). Noting that the jury had found the deadly weapon enhancement to be true both as to count 1 and count 2, the court imposed an additional consecutive one year for each enhancement. The total term of imprisonment imposed was nine years. The court awarded custody credits and imposed other mandatory fines and terms.

## DISCUSSION

Counsel did not raise any issues pursuant to *Anders*. Additionally, our review of the record did not disclose any arguable issues on appeal.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> Counsel notes a discrepancy between the trial court's oral pronouncement of judgment of three years and the court's minute order, indicating four years. The court's oral pronouncement of judgment controls (*People v. Delgado* (2008) 43 Cal.4th 1059, 1070), and the sentence is accurately reflected in the abstract of judgment.

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.